

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 388
94TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, April 5, 2007, with recommendation that the Senate Committee Substitute do pass.

0979S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 260.470, RSMo, and to enact in lieu thereof fifteen new sections relating to environmental covenants.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 260.470, RSMo, is repealed and fifteen new sections enacted in lieu thereof, to be known as sections 260.470, 260.1000, 260.1003, 260.1006, 260.1009, 260.1012, 260.1015, 260.1018, 260.1021, 260.1024, 260.1027, 260.1030, 260.1033, 260.1036, and 260.1039, to read as follows:

260.470. 1. When the director places a site on the registry as provided in section 260.440, and after the resolution of any appeal under section 260.455, he shall file with the county recorder of deeds the period during which the site was used as a hazardous waste disposal area. When the director finds that a site on the registry has been properly closed under subdivision (5) of subsection 3 of section 260.445 with no evidence of potential adverse impact, he shall file this finding with the county recorder of deeds. The county recorder of deeds shall file this information so that any purchaser will be given notice that the site has been placed on, or removed from, the registry.

2. Any owner of a registry site may petition the department to remove the site from the registry provided that:

(1) Corrective actions have addressed the contamination at the site in accordance with a department-approved risk-based corrective action plan;

(2) The department has issued a letter indicating that no further actions are required to address current risk from contaminants for the site; and

(3) An environmental covenant for the property that meets the

19 requirements of sections 260.1000 to 260.1060 has been filed with the
20 county recorder of deeds.

21 3. The department shall approve such a request unless the
22 department determines that removal from the registry would result in
23 significant current or future risk of harm to human health, public
24 welfare, or the environment. In making such a determination, the
25 department shall provide a written justification that considers the
26 amount, toxicity, and persistence of any contaminants left in place and
27 the stability of current site conditions. Any denial under this
28 subsection may be appealed to the commission in the manner provided
29 in section 260.460.

260.1000. Sections 260.1000 to 260.1039 shall be cited as the
2 "Missouri Environmental Covenants Law".

260.1003. As used in sections 260.1000 to 260.1039, the following
2 terms shall mean:

3 (1) "Activity and use limitations", restrictions or obligations with
4 respect to real property created under sections 260.1000 to 260.1039;

5 (2) "Department", the department of natural resources or any
6 other state or federal department that determines or approves the
7 environmental response project under which the environmental
8 covenant is created;

9 (3) "Common interest community", a condominium, cooperative,
10 or other real property with respect to which a person, by virtue of the
11 person's ownership of a parcel of real property, is obligated to pay
12 property taxes, insurance premiums, maintenance, or improvement of
13 other real property described in a recorded covenant that creates the
14 common interest community;

15 (4) "Environmental covenant", a servitude arising under an
16 environmental response project that imposes activity and use
17 limitations;

18 (5) "Environmental response project", a plan or work performed
19 for environmental remediation of real property and conducted:

20 (a) Under a federal or state program governing environmental
21 remediation of real property, including but not limited to the Missouri
22 hazardous waste management law as specified in this chapter;

23 (b) Incident to closure of a solid or hazardous waste management
24 unit, if the closure is conducted with approval of the department; or

25 (c) Under a state voluntary cleanup program authorized in the
26 Missouri hazardous waste management law as specified in this chapter;
27 but shall not include plans or work performed for environmental
28 remediation of releases from aboveground storage tanks or
29 underground storage tanks as defined in section 319.100, RSMo;

30 (6) "Holder", the grantee of an environmental covenant as
31 specified in section 260.1006;

32 (7) "Person", an individual, corporation, business trust, estate,
33 trust, partnership, limited liability company, association, joint venture,
34 public corporation, government, governmental subdivision, department,
35 or instrumentality, or any other legal or commercial entity;

36 (8) "Record", information that is inscribed on a tangible medium
37 or that is stored in an electronic or other medium and is retrievable in
38 perceivable form;

39 (9) "State", a state of the United States, the District of Columbia,
40 Puerto Rico, the United States Virgin Islands, or any territory or
41 insular possession subject to the jurisdiction of the United States.

260.1006. 1. Any person, including a person that owns an interest
2 in the real property, the department, or a municipality or other unit of
3 local government, may be a holder. An environmental covenant may
4 identify more than one holder. The interest of a holder is an interest
5 in real property.

6 2. The rights of a department under sections 260.1000 to 260.1039
7 or under an environmental covenant, other than a right as a holder, is
8 not an interest in real property.

9 3. A department is bound by any obligation it assumes in an
10 environmental covenant, but a department does not assume obligations
11 merely by signing an environmental covenant. Any other person that
12 signs an environmental covenant is bound by the obligations the person
13 assumes in the covenant, but signing the covenant does not change
14 obligations, rights, or protections granted or imposed under law other
15 than sections 260.1000 to 260.1039 except as provided in the covenant.

16 4. The following rules apply to interests in real property in
17 existence at the time an environmental covenant is created or amended:

18 (1) An interest that has priority under other law is not affected
19 by an environmental covenant unless the person that owns the interest
20 subordinates that interest to the covenant;

21 **(2) Sections 260.1000 to 260.1039 do not require a person that**
22 **owns a prior interest to subordinate that interest to an environmental**
23 **covenant or to agree to be bound by the covenant;**

24 **(3) A subordination agreement may be contained in an**
25 **environmental covenant covering real property or in a separate record.**
26 **If the environmental covenant covers commonly owned property in a**
27 **common interest community, the record may be signed by any person**
28 **authorized by the governing board of the owners association;**

29 **(4) An agreement by a person to subordinate a prior interest to**
30 **an environmental covenant affects the priority of that person's interest**
31 **but does not by itself impose any affirmative obligation on the person**
32 **with respect to the environmental covenant.**

260.1009. 1. An environmental covenant must:

2 **(1) State that the instrument is an environmental covenant**
3 **executed under sections 260.1000 to 260.1039;**

4 **(2) Contain a legally sufficient description of the real property**
5 **subject to the covenant;**

6 **(3) Describe the activity and use limitations on the real property;**

7 **(4) Identify every holder;**

8 **(5) Be signed by the department, every holder, and unless waived**
9 **by the department, every owner of the fee simple of the real property**
10 **subject to the covenant; and**

11 **(6) Identify the name and location of any administrative record**
12 **for the environmental response project reflected in the environmental**
13 **covenant.**

14 **2. In addition to the information required by subsection 1 of this**
15 **section, an environmental covenant may contain other information,**
16 **restrictions, and requirements agreed to by the persons who signed it,**
17 **including any:**

18 **(1) Requirements for notice following transfer of a specified**
19 **interest in, or concerning proposed changes in use of, applications for**
20 **building permits for, or proposals for any site work affecting the**
21 **contamination on, the property subject to the covenant;**

22 **(2) Requirements for periodic reporting describing compliance**
23 **with the covenant;**

24 **(3) Rights of access to the property granted in connection with**
25 **implementation or enforcement of the covenant;**

26 (4) A brief narrative description of the contamination and
27 remedy, including the contaminants of concern, the pathways of
28 exposure, limits on exposure, and the location and extent of the
29 contamination;

30 (5) Limitation on amendment or termination of the covenant in
31 addition to those contained in sections 260.1024 and 260.1027; and

32 (6) Rights of the holder in addition to its right to enforce the
33 covenant under section 260.1030.

34 3. In addition to other conditions for its approval of an
35 environmental covenant, the department may require those persons
36 specified by the department who have interests in the real property to
37 sign the covenant.

38 4. An environmental covenant shall not be required for property
39 owned by the federal government prior to the transfer of the property
40 to a nonfederal entity or person. Activity and use limitations at federal
41 property shall be incorporated into an installation's master plan or
42 other similar and appropriate remedial documentation. Nothing in this
43 subsection shall limit any authority otherwise available to the
44 department to enforce terms of an environmental response project at
45 a federal installation.

260.1012. 1. An environmental covenant that complies with
2 sections 260.1000 to 260.1039 runs with the land.

3 2. An environmental covenant that is otherwise effective is valid
4 and enforceable even if:

5 (1) It is not appurtenant to an interest in real property;

6 (2) It can be or has been assigned to a person other than the
7 original holder;

8 (3) It is not of a character that has been recognized traditionally
9 at common law;

10 (4) It imposes a negative burden;

11 (5) It imposes an affirmative obligation on a person having an
12 interest in the real property or on the holder;

13 (6) The benefit or burden does not touch or concern real
14 property;

15 (7) There is no privity of estate or contract;

16 (8) The holder dies, ceases to exist, resigns, or is replaced; or

17 (9) The owner of an interest subject to the environmental

18 covenant and the holder are the same person.

19 3. An instrument that creates restrictions or obligations with
20 respect to real property that would qualify as activity and use
21 limitations except for the fact that the instrument was recorded before
22 the effective date of sections 260.1000 to 260.1039 is not invalid or
23 unenforceable because of any of the limitations on enforcement of
24 interests described in subsection 2 of this section or because it was
25 identified as an easement, servitude, deed restriction, or other
26 interest. Sections 260.1000 to 260.1039 do not apply in any other
27 respect to such an instrument.

28 4. Sections 260.1000 to 260.1039 do not invalidate or render
29 unenforceable any interest, whether designated as an environmental
30 covenant or other interest, that is established or required by a
31 constitutionally-created agency or federal agency.

 260.1015. Sections 260.1000 to 260.1039 do not authorize a use of
2 real property that is otherwise prohibited by zoning, by law other than
3 sections 260.1000 to 260.1039 regulating use of real property, or by a
4 recorded instrument that has priority over the environmental covenant.
5 An environmental covenant may prohibit or restrict uses of real
6 property which are authorized by zoning or by laws other than sections
7 260.1000 to 260.1039.

 260.1018. 1. A copy of an environmental covenant shall be
2 provided by the persons and in the manner required by the department
3 to:

- 4 (1) Each person that signed the covenant;
- 5 (2) Each person holding a recorded interest in the real property
6 subject to the covenant;
- 7 (3) Each person in possession of the real property subject to the
8 covenant;
- 9 (4) Each municipality or other unit of local government in which
10 real property subject to the covenant is located; and
- 11 (5) Any other person the department requires.

12 2. The validity of a covenant is not affected by failure to provide
13 a copy of the covenant as required under this section.

 260.1021. 1. An environmental covenant and any amendment or
2 termination of the covenant must be recorded in every county or city
3 not within a county in which any portion of the real property subject

4 to the covenant is located. For purposes of indexing, a holder shall be
5 treated as a grantee.

6 2. Except as otherwise provided in section 260.1024, an
7 environmental covenant is subject to the laws of this state governing
8 recording and priority of interests in real property.

260.1024. 1. An environmental covenant is perpetual unless it is:

2 (1) By its terms limited to a specific duration or terminated by
3 the occurrence of a specific event;

4 (2) Terminated by consent under section 260.1027;

5 (3) Terminated by subsection 2 of this section;

6 (4) Terminated by foreclosure of an interest that has priority
7 over the environmental covenant; or

8 (5) Terminated or modified in an eminent domain proceeding,
9 but only if:

10 (a) The department that signed the covenant is a party to the
11 proceeding;

12 (b) All persons identified in section 260.1027 are given notice of
13 the pendency of the proceeding; and

14 (c) The court determines, after hearing, that the termination or
15 modification will not adversely affect human health, public welfare, or
16 the environment.

17 2. If the department that signed an environmental covenant has
18 determined that the intended benefits of the covenant can no longer be
19 realized, a court, under the doctrine of changed circumstances, in an
20 action in which all persons identified in section 260.1027 have been
21 given notice, may terminate the covenant or reduce its burden on the
22 real property subject to the covenant. The department's determination
23 or its failure to make a determination upon request is subject to review
24 under chapter 536, RSMo.

25 3. Except as otherwise provided in subsections 1 and 2 of this
26 section, an environmental covenant may not be extinguished, limited,
27 or impaired through issuance of a tax deed, foreclosure of a tax lien, or
28 application of the doctrine of adverse possession, prescription,
29 abandonment, waiver, lack of enforcement, or acquiescence, or any
30 similar doctrine.

31 4. An environmental covenant may not be extinguished, limited,
32 or impaired by the application of chapter 442, RSMo, or chapter 444,

33 RSMo.

260.1027. 1. An environmental covenant may be amended or
2 terminated by consent only if the amendment or termination is signed
3 by:

4 (1) The department;

5 (2) Unless waived by the department, the current owner of the
6 fee simple of the real property subject to the covenant;

7 (3) Each person that originally signed the covenant, unless the
8 person waived in a signed record the right to consent or a court finds
9 that the person no longer exists or cannot be located or identified with
10 the exercise of reasonable diligence; and

11 (4) Except as otherwise provided in subsection 4 of this section,
12 the holder.

13 2. If an interest in real property is subject to an environmental
14 covenant, the interest is not affected by an amendment of the covenant
15 unless the current owner of the interest consents to the amendment or
16 has waived in a signed record the right to consent to amendments.

17 3. Except for an assignment undertaken pursuant to a
18 governmental reorganization, assignment of an environmental covenant
19 to a new holder is an amendment.

20 4. Except as otherwise provided in an environmental covenant:

21 (1) A holder may not assign its interest without consent of the
22 other parties;

23 (2) A holder may be removed and replaced by agreement of the
24 other parties specified in subsection 1 of this section; and

25 5. A court of competent jurisdiction may fill a vacancy in the
26 position of holder.

260.1030. 1. A civil action for injunctive or other equitable relief
2 for violation of an environmental covenant may be maintained by:

3 (1) A party to the covenant;

4 (2) The department;

5 (3) Any person to whom the covenant expressly grants power to
6 enforce;

7 (4) A person whose interest in the real property or whose
8 collateral or liability may be affected by the alleged violation of the
9 covenant; or

10 (5) A municipality or other unit of local government in which the

11 real property subject to the covenant is located.

12 2. Sections 260.1000 to 260.1039 do not limit the regulatory
13 authority of the department under law other than sections 260.1000 to
14 260.1039 with respect to an environmental response project.

15 3. A person is not responsible for or subject to liability for
16 environmental remediation solely because it has the right to enforce an
17 environmental covenant.

260.1033. 1. The department shall establish an activity and use
2 limitation information system, and ensure that it is maintained, that
3 provides readily accessible information on sites with known
4 contamination, and records the creation, amendment, and termination
5 of covenants. The activity and use limitation information system shall
6 distinguish clearly between three categories of sites contaminated with
7 hazardous substance contamination:

8 (1) Sites where no investigation or remedial action has been
9 performed, or where remedial actions are in progress but are not
10 complete;

11 (2) Sites where remedial action has been taken to address known
12 risks to human health, public welfare, and the environment and the site
13 is suitable for certain land uses and the department has issued a letter
14 indicating that the site is suitable for certain land uses and that further
15 investigation and remedial action is not required;

16 (3) Sites where previous concerns about contamination should
17 no longer be an issue because of removal of waste and contamination
18 or investigation results that demonstrate that contamination is now
19 below levels considered suitable for "unrestricted" use.

20 2. After an environmental covenant or an amendment or
21 termination of a covenant is filed in the information system established
22 under subsection 1 of this section, a notice of the covenant, amendment,
23 or termination that complies with this section may be recorded in the
24 land records in lieu of recording the entire covenant. Any such notice
25 must contain:

26 (1) A legally sufficient description and any available street
27 address of the real property subject to the covenant;

28 (2) The name and address of the owner of the fee simple interest
29 in the real property, the department, and the holder if other than the
30 department;

31 **(3) A statement that the covenant, amendment, or termination is**
32 **available in an information system at the department, which discloses**
33 **the method of any electronic access; and**

34 **(4) A statement that the notice is notification of an**
35 **environmental covenant executed under sections 260.1000 to 260.1039.**

36 **3. A statement in substantially the following form, executed with**
37 **the same formalities as a deed in this state, satisfies the requirements**
38 **of subsection 2 of this section:**

39 **"1. This notice is filed in the land records of the**
40 **..... (political subdivision) of (insert name of**
41 **jurisdiction in which the real property is located) under**
42 **Section 260.1033, RSMo, of the Missouri Environmental**
43 **Covenants Law, Sections 260.1000 to 260.1039, RSMo.**

44 **2. This notice and the covenant, amendment or**
45 **termination to which it refers may impose significant**
46 **obligations with respect to the property described below.**

47 **3. A legal description of the property is attached as**
48 **Exhibit A to this notice. The address of the property that**
49 **is subject to the environmental covenant is (insert**
50 **address of property) (not available).**

51 **4. The name and address of the owner of the fee**
52 **simple interest in the real property on the date of this**
53 **notice is (insert name of current owner of the**
54 **property and the owner's current address as shown on the**
55 **tax records of the jurisdiction in which the property is**
56 **located).**

57 **5. The environmental covenant, amendment or**
58 **termination was signed by (insert name and address**
59 **of the department).**

60 **6. The environmental covenant, amendment, or**
61 **termination was filed in the information system on (insert date of filing).**

62 **7. The full text of the covenant, amendment or**
63 **termination and any other information required by the**
64 **department is on file and available for inspection and**
65 **copying in the information system maintained for that**
66 **purpose by the department at (insert address and**
67

68 room of building in which the information system is
69 maintained). The covenant, amendment or termination
70 may be found electronically at (insert Internet
71 address for covenant)."

260.1036. Sections 260.1000 to 260.1039 shall not apply to
2 aboveground or underground storage tanks as defined in section
3 319.100, RSMo.

260.1039. Sections 260.1000 to 260.1039 modifies, limits, or
2 supersedes the federal Electronic Signatures in Global and National
3 Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify,
4 limit, or supersede Section 101 of that Act, 15 U.S.C. Section 7001(a), or
5 authorize electronic delivery of any of the notices described in Section
6 103 of that Act, 15 U.S.C. Section 7003(b).

✓

Bill

Copy